33 pg ✓

MONTANA LEGISLATIVE HISTORY

Chapter 52 19 99

Bill H 48 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-7	✓ C	Hearing Date(s)	3-3	✓ C
	1-11	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

	1/28	Referred to Business and Industry		
	3/11	Hearing		
	3/18	Committee Executive Action--Bill Concurred as Amended	7	0
	3/18	Committee Report--Bill Concurred as Amended		
	3/19	2nd Reading Concurred	44	0
	3/20	3rd Reading Concurred	42	0
		Returned to House with Amendments		
	4/09	2nd Reading Senate Amendments Concurred	95	2
	4/10	3rd Reading Passed as Amended by Senate	93	6
	4/10	Sent to Enrolling		
	4/12	Returned from Enrolling		
	4/13	Signed by Speaker		
	4/14	Signed by President		
	4/15	Transmitted to Governor		
	4/19	Signed by Governor		
	4/20	Chapter Number Assigned		
		Chapter Number 331		
		Effective Date: 10/01/1999 - All Sections		

HB 48 Introduced by McGee, et al. *LC0520 Drafter: Lane*

Generally Revise and Clarify Certain Sentencing-related Criminal Procedures Statutes;...

By Request of Correctional Standards and Oversight Committee

	12/03	Introduced		
	12/21	Referred to Judiciary		
	1/04	1st Reading		
→	1/07	Hearing		
	1/11	Committee Executive Action--Bill Passed as Amended	19	0
	1/12	Committee Report--Bill Passed as Amended		
	1/13	2nd Reading Passed	97	0
	1/14	3rd Reading Passed	97	0
		Transmitted to Senate		
	1/27	Referred to Judiciary		
→	3/03	Hearing		
	3/03	Committee Executive Action--Bill Concurred	8	0
	3/03	Committee Report--Bill Concurred		
	3/04	2nd Reading Concurred	50	0
	3/05	3rd Reading Concurred	50	0
		Returned to House		
	3/05	Sent to Enrolling		
	3/08	Returned from Enrolling		
	3/09	Signed by Speaker		
	3/10	Signed by President		
	3/10	Transmitted to Governor		
	3/15	Signed by Governor		
	3/16	Chapter Number Assigned		
		Chapter Number 52		
		Effective Date: 10/01/1999 - All Sections		

HOUSE BILL NO. 48

INTRODUCED BY MCGEE D, CHRISTIAENS C

BY REQUEST OF THE CORRECTIONAL STANDARDS AND OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING CERTAIN SENTENCING-RELATED CRIMINAL PROCEDURES STATUTES; AND AMENDING SECTIONS 45-9-205, 46-18-201, 46-18-202, 46-18-203, 46-18-219, 46-18-220, 46-18-222, 46-18-225, 46-18-231, 46-18-303, 46-18-502, AND 46-23-1011, MCA."

WHEREAS, the Correctional Standards and Oversight Committee was authorized by the Fifty-Fifth Legislature to conduct a study of correctional standards and to act as a correctional oversight committee; and

WHEREAS, the Committee contracted for a review of Title 46, chapter 18, MCA, sentencing statutes; and

WHEREAS, the Committee found that the statutes providing for sentencing and judgment regarding criminal procedures are confusing and rife with cross-references, internal references, and inconsistent terminology that make the statutes difficult to read and understand; and

WHEREAS, the Committee recommended that a bill be drafted to amend Title 46, chapter 18, MCA, to make nonsubstantive changes to clarify and streamline the statutes to eliminate contradictions, confusion, inconsistent terminology, and excessive internal references.

THEREFORE, the Legislature of the State of Montana finds it appropriate to so amend certain sentencing-related statutes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-9-205, MCA, is amended to read:

"**45-9-205. Exemption from mandatory minimum sentences.** If a ~~court~~ sentencing judge imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in ~~46-18-201(5)~~ [section 3(2)] do not apply."

Section 2. Section 46-18-201, MCA, is amended to read:

"46-18-201. **Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, ~~the court~~ a sentencing judge may:

~~(a)~~ defer imposition of sentence, except as otherwise specifically provided ~~in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304~~ by statute, for a period~~, except as otherwise provided~~;

(i) not exceeding 1 year for ~~any~~ a misdemeanor or for a period not exceeding 3 years for ~~any~~ a felony~~.~~; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended. ~~The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:~~

~~(i) jail base release;~~

~~(ii) jail time not exceeding 180 days;~~

~~(iii) conditions for probation;~~

~~(iv) payment of the costs of confinement;~~

~~(v) payment of a fine as provided in 46-18-231;~~

~~(vi) payment of costs as provided in 46-18-232 and 46-18-233;~~

~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;~~

~~(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;~~

~~(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;~~

~~(x) community service;~~

~~(xi) home arrest as provided in Title 46, chapter 18, part 10;~~

~~(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;~~

~~(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or~~

~~(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).~~

~~(b)~~(2) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. ~~The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).~~

~~(c)~~(3) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

~~(d)~~(b) ~~require~~ payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

~~(e)~~(c) ~~impose~~ a term of incarceration at a county jail or state prison ~~sentence~~, as provided in Title 45, for the offense ~~or~~;

(d) ~~commit~~ commitment of the ~~defendant~~ offender to the department of corrections for a period not to exceed 5 years, with a recommendation for placement in an appropriate correctional facility or program;

~~(f)~~(e) with the approval of the facility or program, ~~order the offender to be placed~~ placement of the offender in a community corrections facility or program as provided in 53-30-321;

~~(g)~~(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, ~~order the offender to be placed~~ placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) ~~impose~~ any combination of subsections ~~(1)(b)~~ (2) through ~~(1)(g)~~ (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) jail time not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(n) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(m).

~~(2)~~(5) In addition to any penalties imposed pursuant to subsection (1), if the ~~court~~ sentencing judge finds that the victim of the offense has sustained a pecuniary loss, the ~~court~~ sentencing judge shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

~~(3) if a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.~~

~~(4) if any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the~~

~~sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.~~

~~(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).~~

~~(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.~~

~~(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.~~

~~(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.~~

~~(9)~~(6) In imposing a sentence on ~~a defendant~~ an offender convicted of a sexual or violent offense, as defined in 46-23-502, the ~~court~~ sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

~~(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.~~

~~(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not~~

~~select an alternative to imprisonment, based on the criteria contained in 46-18-225.~~

~~(12)~~(7) If a felony sentence includes probation, the department of corrections shall supervise the ~~defendant~~ offender unless the court specifies otherwise.

~~(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219.~~"

NEW SECTION. **Section 3. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202(3)(a), aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-9-101(2), (3), and (5)(d), criminal sale of dangerous drugs;

(i) 45-9-102(4), criminal possession of dangerous drugs; and

(j) 45-9-103(2), criminal possession with intent to sell dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

Section 4. Section 46-18-202, MCA, is amended to read:

"**46-18-202. Additional restrictions on sentence.** (1) The ~~court~~ sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that ~~it~~ the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the ~~defendant's~~ offender's holding public office;

(b) prohibition of the ~~defendant's~~ offender's owning or carrying a dangerous weapon;

(c) restrictions on the ~~defendant's~~ offender's freedom of association;

(d) restrictions on the ~~defendant's~~ offender's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the ~~district court~~ sentencing judge imposes a sentence of imprisonment in ~~the~~ a state prison for a term exceeding 1 year, the ~~court~~ sentencing judge may also impose the restriction that the ~~defendant~~ offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the ~~court~~ sentencing judge shall state the reasons for it in writing. If the ~~court~~ sentencing judge finds that the restriction is necessary for the protection of society, ~~it~~ the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) When the court imposes a sentence of probation, as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.~~

(3) An offender convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

~~(4) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.~~"

Section 5. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for a revocation showing probable cause that the ~~defendant~~ offender has violated any condition of a sentence or any condition of a deferred imposition of sentence, the ~~court~~ judge may issue an order for a hearing on revocation. The order must require the ~~defendant~~ offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the ~~defendant~~ offender personally. The ~~court~~ judge may also issue an arrest warrant directing any peace officer or a probation officer to arrest the ~~defendant~~ offender and bring the ~~defendant~~ offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the ~~defendant~~ offender must be brought before the ~~court~~ judge, and the ~~defendant~~ offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the ~~defendant's~~ offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the ~~defendant~~ offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the ~~defendant,~~ offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the ~~defendant~~ offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the ~~defendant~~ offender may excuse the violation

by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the ~~defendant's~~ offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the ~~court~~ judge finds that the ~~defendant~~ offender has violated the terms and conditions of the suspended or deferred sentence, the ~~court~~ judge may:

~~(a)~~(i) continue the suspended or deferred sentence without a change in conditions;

~~(b)~~(ii) continue the suspended sentence with modified or additional terms and conditions;

~~(c)~~(iii) revoke the suspension of sentence and require the ~~defendant~~ offender to serve either the sentence imposed or any lesser sentence; or

~~(d)~~(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit, however, must be allowed for jail or home arrest time already served.

(8) If the ~~court~~ judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the ~~defendant~~ offender, if in custody, immediately released."

Section 6. Section 46-18-219, MCA, is amended to read:

"**46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3), if ~~a person~~ an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the ~~person~~ offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if ~~a person~~ an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the ~~person~~ offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202(1), aggravated assault;

(iii) 45-5-302, kidnapping; or

(iv) 45-5-401, robbery.

(2) Except as provided in 46-23-210 and subsection (3) of this section, ~~a person~~ an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical ~~reasons~~ reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the ~~person~~ offender was previously sentenced for either of two or three offenses listed in subsection (1), ~~as applicable,~~ pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the ~~person's~~ offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or [section 3], this section prevails.

~~(4)~~(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type

of facility that does not provide secure detention."

Section 7. Section 46-18-220, MCA, is amended to read:

"46-18-220. Sentences for certain offenses committed in state prison -- death penalty. ~~A person serving a sentence of imprisonment in the state prison~~ An offender convicted of having committed ~~the offense of~~ attempted deliberate homicide, aggravated assault, or aggravated kidnapping ~~committed~~ while incarcerated at ~~the~~ a state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

Section 8. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. ~~All mandatory~~ Mandatory minimum sentences prescribed by the laws of this state, ~~and~~ mandatory life sentences prescribed by 46-18-219, and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201~~(5) through (7)~~(1)(b), 46-18-221(3), 46-18-224, ~~and~~ 46-18-502(3), and [section 3] do not apply if:

(1) the ~~defendant~~ offender was less than 18 years of age at the time of the commission of the offense for which the ~~defendant~~ offender is to be sentenced;

(2) the ~~defendant's~~ offender's mental capacity, at the time of the commission of the offense for which the ~~defendant~~ offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the ~~defendant~~ offender, at the time of the commission of the offense for which the ~~defendant~~ offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the ~~defendant~~ offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the ~~defendant's~~ offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the ~~court~~ judge determines that treatment

of the ~~defendant~~ offender in a local community affords a better opportunity for rehabilitation of the ~~defendant~~ offender and for the ultimate protection of the victim and society, in which case the ~~court~~ judge shall include in its judgment a statement of the reasons for its determination."

Section 9. Section 46-18-225, MCA, is amended to read:

"46-18-225. ~~Criteria for sentencing~~ Sentencing of nonviolent felony offenders -- criteria -- alternatives to be considered -- court to state reasons for imprisonment. (1) In sentencing a nonviolent felony offender, the sentencing judge shall first consider alternatives to imprisonment of the offender in a state prison, including placement of the offender in a community corrections facility or program, a prerelease center, or a prerelease program. In considering alternatives to imprisonment, the sentencing judge shall examine the sentencing criteria contained in subsection (2).

(2) Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of imprisonment in a state prison, the ~~court~~ sentencing judge shall take into account whether:

~~(1)~~(a) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in a state prison;

~~(2)~~(b) the needs of the offender can be better served in the community or in a facility or program other than a state prison;

~~(3)~~(c) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

~~(4)~~(d) the offender acted under strong provocation;

~~(5)~~(e) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

~~(6)~~(f) the offender has no prior history of conviction for a criminal act or, if the offender has a prior history of conviction for a criminal act, the offender has led a law-abiding life for a substantial period of time before the commission of the present crime;

~~(7)~~(g) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

~~(8)~~(h) the character and attitude of the offender indicate that the offender is likely to commit another crime;

~~(9)~~(i) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

~~(10)~~(j) imprisonment of the offender would create an excessive hardship on the offender or the

offender's family.

(3) If the judge sentences the offender to a state prison, the judge shall state the reasons why the judge did not select an alternative to imprisonment, based on the criteria contained in subsection (2)."

Section 10. Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) (a) ~~Whenever~~ Except as provided in subsection (1)(b), whenever, upon a verdict or a plea of guilty, ~~a person~~ an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the ~~court~~ sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine, only in accordance with subsection (3)~~, and in lieu of or in addition to a sentence of imprisonment~~.

(b) For those crimes for which penalties are provided in ~~45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109~~ the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202(3), aggravated assault, felony assault;

(iii) 45-5-302(2), kidnapping;

(iv) 45-5-303(2), aggravated kidnapping;

(v) 45-5-401(2), robbery;

(vi) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(vii) 45-5-503(2) and (3), sexual intercourse without consent;

(viii) 45-9-101(2), (3), and (5)(d), criminal sale of a narcotic drug, criminal sale of a dangerous drug included in Schedule I or Schedule II, or other criminal sale of a dangerous drug;

(ix) 45-9-102(4), criminal possession of an opiate;

(x) 45-9-103(2), criminal possession of an opiate with an intent to sell; and

(xi) 45-9-109, criminal sale of dangerous drugs on or near school property.

(2) Whenever, upon a verdict or a plea of guilty, ~~a person~~ an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the ~~court~~ sentencing judge may

impose a fine only in accordance with subsection (3).

(3) The ~~court~~ sentencing judge may not sentence ~~a defendant~~ an offender to pay a fine unless the ~~defendant~~ offender is or will be able to pay the fine. In determining the amount and method of payment, the ~~court~~ sentencing judge shall take into account the nature of the crime committed, the financial resources of the ~~defendant~~ offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the ~~court~~ sentencing judge not to exceed $50,000."

Section 11. Section 46-18-303, MCA, is amended to read:

"**46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

(1) (a) The offense was deliberate homicide and was committed:

(i) by ~~a person~~ an offender serving a sentence of imprisonment in ~~the~~ a state prison~~.~~;

~~(2)(ii) The offense was deliberate homicide and was committed~~ by ~~a defendant~~ an offender who had been previously convicted of another deliberate homicide~~.~~;

~~(3)~~(iii) ~~The offense was deliberate homicide and was committed~~ by means of torture~~.~~;

~~(4)~~(iv) ~~The offense was deliberate homicide and was committed~~ by ~~a person~~ an offender lying in wait or ambush~~.~~;

~~(5)~~(v) ~~The offense was deliberate homicide and was committed~~ as a part of a scheme or operation that, if completed, would result in the death of more than one person~~.~~; or

(vi) by an offender during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

~~(6)~~(b) The offense was deliberate homicide, as defined in 45-5-102(1)(a), and the victim was a peace officer killed while performing the officer's duty.

~~(7)~~(2) The offense was aggravated kidnapping that resulted in the death of the victim or the death by direct action of the ~~defendant~~ offender of a person who rescued or attempted to rescue the victim.

~~(8)~~(3) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by ~~a person~~ an offender who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter, and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

~~(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.~~

~~(10)~~(4) The offense was sexual intercourse without consent ~~and~~, the ~~defendant~~ offender has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another state or of the United States that if committed in this state would be the offense of sexual intercourse without consent, and the ~~defendant~~ offender inflicted serious bodily injury upon a person in the course of committing each offense."

Section 12. Section 46-18-502, MCA, is amended to read:

"46-18-502. **Sentencing of persistent felony offender.** (1) Except as provided in 46-18-219 and subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if the offender was 21 years of age or older at the time of the commission of the present offense.

(2) ~~If~~ Except as provided in 46-18-219, an offender shall be imprisoned in a state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if:

(a) the offender was a persistent felony offender, as defined in 46-18-501, at the time of the offender's previous felony conviction~~,~~;

(b) less than 5 years have elapsed between the commission of the present offense and ~~either~~:

(i) the previous felony conviction; or

(ii) the offender's release on parole, ~~or otherwise~~ from prison, or from other commitment imposed as a result of the previous felony conviction~~,~~; and

(c) the offender was 21 years of age or older at the time of the commission of the present offense~~, the offender shall, except as provided in 46-18-219, be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both~~.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) of this section or the first 10 years of a sentence imposed under subsection (2) of this section may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed."

Section 13. Section 46-23-1011, MCA, is amended to read:

"**46-23-1011. Supervision on probation.** (1) The department shall supervise ~~persons~~ offenders during their probation period in accord with the conditions set by a ~~court~~ sentencing judge.

(2) A copy of the conditions of probation must be signed by the probationer and given to the probationer and the probationer's probation and parole officer, who shall report on the probationer's progress under rules of the ~~court~~ sentencing judge. Any probation agreement signed by the probationer may contain a clause waiving extradition.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) The probation and parole officer may recommend and a ~~court~~ judge may modify any condition of probation or suspension of sentence at any time. Notice must be given to the probation and parole officer before any condition is modified, and the officer must be given an opportunity to present the officer's ideas or recommendations on any modification. A copy of a modification of conditions must be delivered to the probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only as provided under the provisions of 46-18-246.

(5) The probation and parole officer shall keep records as the department or the ~~court~~ sentencing judge may require.

(6) (a) Upon recommendation of the probation and parole officer, a ~~court~~ judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if the ~~court~~ judge determines that a conditional discharge from supervision is in the best interests of the probationer and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Subsection (6)(a) does not prohibit a ~~court~~ judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been

conditionally discharged from supervision.

(c) If the department certifies to the ~~court~~ sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the ~~court~~ judge may not place an offender on probation under supervision by that district office unless ~~it~~ the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the ~~court~~ judge for conditional discharge. The ~~court~~ judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

- END -

HB 47 SPONSOR: Anderson, Shiell SHORT TITLE: Uniform statute of limitations for insurance actions
BY REQUEST OF: State Auditor
REFERRED ON: 12/21/1998 HEARD ON: 01/18/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

HB 48 SPONSOR: McGee, Dan SHORT TITLE: Revise and clarify certain sentence-related criminal procedures
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 12/21/1998 HEARD ON: 01/07/1999
EXECUTIVE ACTION: 01/11/1999 Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

HB 53 SPONSOR: Clark, Robert SHORT TITLE: Specify that a coroner (or deputy)shall pronounce the death at execution
BY REQUEST OF: Department Of Corrections
REFERRED ON: 12/21/1998 HEARD ON: 01/07/1999
EXECUTIVE ACTION: 01/19/1999 Bill Passed as Amended -- VOTE: 13 - 6
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 54 SPONSOR: Menahan, Red SHORT TITLE: Creating the criminal offense of assault with a bodily fluid
BY REQUEST OF: Department Of Corrections
REFERRED ON: 12/21/1998 HEARD ON: 01/08/1999
TABLED ON: 01/19/1999
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 59 SPONSOR: Mood, Douglas SHORT TITLE: Revise laws governing sex & violent offenders
BY REQUEST OF: Department Of Corrections
REFERRED ON: 12/21/1998 HEARD ON: 01/13/1999
REFERRED ON: 02/01/1999
EXECUTIVE ACTION: 01/21/1999 Bill Passed -- VOTE: 12 - 8
EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 14 - 6
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C CLARK**, on January 7, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Services Division
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: 1/7/99 HB 42, HB 53, HB 48,
Date Posted: 1/4/99

{Tape : 1; Side : A; Approx. Time Counter : 259 - 301}

Proponents:

Dave Ohler, Montana Department of Corrections, Chief Legal Counsel
{Tape : 1; Side : A; Approx. Time Counter : 301 - 352}

Opponents:

Betty Waddell, Montana Association of Churches
{Tape : 1; Side : A; Approx. Time Counter : 352 - 454}
Rev. Robert Holmes, Helena
{Tape : 1; Side : A; Approx. Time Counter : 454 - 999}
Sharon Hoff, Montana Catholic Conference
{Tape : 1; Side : B; Approx. Time Counter : 0 - 20}
Eve Malo, Dillon
{Tape : 1; Side : B; Approx. Time Counter : 20 - 54}
Scott Creighton, ACLU
{Tape : 1; Side : B; Approx. Time Counter : 54 - 115}

Informational Testimony:

NONE

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 115 - 476}

Closing by Sponsor:

Chairman Robert Clark made closing statements
{Tape : 1; Side : B; Approx. Time Counter : 476 - 999}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 48}

Chairman Robert Clark resumed the chair.

HEARING ON HB 48

Sponsor:

Rep. McGee presented opening statements that HB 48.
{Tape : 2; Side : A; Approx. Time Counter : 48 -125}
{Tape : 2; Side : A; Approx. Time Counter : 125 - 222}
Proponents:

John Connor, Chief Prosecutor, Attorney General's Office
{Tape : 2; Side : A; Approx. Time Counter : 222 - 279}

Opponents:

NONE

Informational Testimony:

NONE

Questions from Committee Members and Responses:
{Tape : 2; Side : A; Approx. Time Counter : 279 - 321}

Closing by Sponsor:

Rep. Dan McGee made closing remarks.
{Tape : 2; Side : A; Approx. Time Counter : 321 - 335}

EXECUTIVE ACTION, HB 38

{Tape : 2; Side : A; Approx. Time Counter : 335 - 429}
General discussion among members regarding taking executive action on bills; procedural.
{Tape : 2; Side : A; Approx. Time Counter : 429 - 500}{Tape : 2; Side : B; Approx. Time Counter : 0 - 18}

Motion: moved by Rep. Wyatt that HB 38 do pass.
Vote: Motion carried 19-1 with Rep. Jore voting no.
{Tape : 2; Side : B; Approx. Time Counter : 18 - 33}

John Connor, from the Montana Attorney General's office gave further details regarding HB 48 that he previously had not stated.
{Tape : 2; Side : B; Approx. Time Counter : 33 - 81}

Motion: motion to adjourned passed unanimously.

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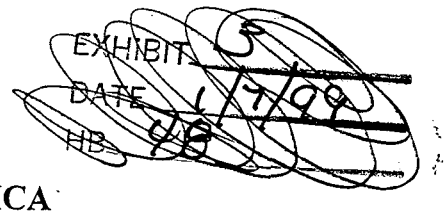

HOUSE BILL NUMBER 48

REVISION OF TITLE 46, CHAPTER 18, MCA

OVERVIEW OF TESTIMONY BY

LUCAS J. FOUST

I. Duties as contractor.

A. Ad Hoc Committee on Sentencing found that Title 46, chapter 18, MCA was confusing and "rife with cross-references and internal references."
B. Clarify and streamline statutes to eliminate excessive internal references, and identify areas in which statutory references and current practices differ regarding criminal sentencing procedure.
C. Recommend technical changes to Title 46, Chapter 18.
D. Work with Valencia Lane, Susan Fox, and various members of Attorney General's office to prepare legislation.

II. Changes proposed for the following 12 sections:
45-9-205, 46-18-201, 202, 203, 219, 220, 222, 225, 231, 303, 502, and 1011, MCA.

III. Proposed changes are to be technical rather than substantive in nature.

IV. General changes throughout Title 46, Chapter 18.

A. Streamlining Section 46-18-201, MCA:
   1. Removal of nine separate subsections.
   2. Relocation of some sections, striking redundant language.
   3. Simplification of concept of deferred, suspended, and imposed sentence.
B. Name for offenses listed after statute number.
C. Removal of language concerning accrual of "good time."
D. General clarification of language.
E. Other Sections:
   1. Consistency of terms throughout chapter. (ex. Court/Sentencing Judge).
   2. Inclusion of "common name" for offense next to statute number.
   3. Inclusion of language from Section 46-18-201 into other sections.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C CLARK**, on January 11, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: Rep. Brad Molnar (R)

Staff Present: John MacMaster, Legislative Services Division
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Date: 1/12/99HB 65,HB 77,HB 94,HB 76
Date Posted: 1/6/99
Executive Action Taken: HB 27; Do Pass

Motion/Vote: Rep. Noennig moved that HB 27 do pass. Motion carried unanimously.

EXECUTIVE ACTION ON HB 48

Motion/Vote: Rep. McGee moved that HB 48 do pass as amended. Motion carried unanimously.

EXECUTIVE ACTION ON HB 81

Motion/Vote: Rep. McGee moved that HB 81 do pass as amended. Motion carried 17-2 with Gutsche and Wyatt voting no.

EXECUTIVE ACTION ON HB 84

No Executive Action was taken on HB 81 as committee members want to hold off until HB 16 is heard.

:

HB 24 SPONSOR: Soft, Loren SHORT TITLE: Adopt uniform child custody jurisdiction and enforcement act
BY REQUEST OF: Joint Oversight Committee On Children And Families
REFERRED ON: 02/03/1999 HEARD ON: 03/04/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION 03/19/1999 Chapter Number Assigned

HB 27 SPONSOR: Noennig, Mark SHORT TITLE: Revise procedure for unlawful detainer
REFERRED ON: 01/27/1999 HEARD ON: 03/10/1999
EXECUTIVE ACTION: 03/16/1999 Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

HB 38 SPONSOR: Peck, Ray SHORT TITLE: Code commissioner bill -- to generally revise and clarify Montana Code Annotated
BY REQUEST OF: Code Commissioner
REFERRED ON: 01/27/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/02/1999 Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

HB 41 SPONSOR: Hagener, Toni SHORT TITLE: Extend surcharge for funding court information technology
BY REQUEST OF: Supreme Court
REFERRED ON: 01/27/1999 HEARD ON: 02/09/1999
EXECUTIVE ACTION: 03/02/1999 Bill Concurred as Amended -- VOTE: 9 - 0
TABLED ON: 02/15/1999
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned

HB 48 SPONSOR: McGee, Dan SHORT TITLE: Revise and clarify certain sentence-related criminal procedures
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 01/27/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/03/1999 Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

HB 53 SPONSOR: Clark, Robert SHORT TITLE: Specify that a coroner (or deputy)shall pronounce the death at execution
BY REQUEST OF: Department Of Corrections
REFERRED ON: 01/28/1999 HEARD ON: 03/09/1999
EXECUTIVE ACTION: 03/17/1999 Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 3, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 48, 2/25/1999; HB 116, 2/25/1999; HB 214, 2/25/1999
Executive Action: HB 48; HB 214; HB 233

HEARING ON HB 116

Sponsor: **REP. DAN MCGEE, HD 21, Laurel**

Proponents:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls
Mike Ferriter, Community Corrections

property it is also an improvement to the land. He said on line 28, they are defining what land surveying means. He passed out a definition for land surveying that is in the statutes. **EXHIBIT(1)** He said when they set property corners it is an improvement to the land.

Proponents' Testimony:

Virginia Mueller, Mueller Consulting, said the placement of a ten year limitation of the liability of a land surveyor for the improvements to the property is a positive step. Discovery of any serious errors would probably be made prior to the ten year limit. Without this limitation a surveyor is forced to maintain very expensive liability insurance for a lifetime.

Larry Marshall, MT Associates Inc. of Land Surveyors, said he would like to limit his liability especially when he retires. The cost for liability insurance runs from $2000 - $10,000 plus the expense of the deductible.

{Tape : 1; Side : A; Approx. Time Counter : 9:40 a.m.}

Frank Ritchie, Ritchie Land Surveying, rose in support of **HB 214. EXHIBIT(2)**

Stephen Ries, Ries Surveying, said even after surveyors have passed away they try to get compensation for errors.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. MCGEE said current law states that land surveying falls under the statute of limitations. But what is not clear is if the setting of a property corner is an improvement to the ground.

{Tape : 1; Side : A; Approx. Time Counter : 9:45 a.m.}

HEARING ON HB 48

Sponsor: REP. DAN MCGEE, HD 21, Laurel

Proponents:

Luke Faust, Attorney

John Conner, Attorney General's Office, and MT County Attorney Assoc.
SEN. CHRIS CHRISTIAENS, SD 23, Great Falls

Opponents: None

Opening Statement by Sponsor:

REP. DAN MCGEE, HD 21, Laurel, said Title 45 and 46 need a lot of work. They worked on Title 46, chapter 18 that had some very confusing statutes. There are no changes or anything that is new in this bill it is simply a rewrite. **EXHIBIT(3)**

Proponents' Testimony:

Luke Foust, Attorney, said he has reviewed Title 46 and has tried to clarify the statute and the changes are technical in nature. He said what a district court judge can do upon sentencing is one of three things. He may defer imposition of sentencing, suspend sentencing or impose a particular sentence. People should be able to read this bill and understand it. He said as a public offender he deals with Title 46 everyday.

John Conner, Attorney General's Office, and MT County Attorney Assoc., said where there are deleted portions in this bill they are somewhere else in the statute to read better, etc. He said one example is they made a whole new section out of the mandatory minimums so they are easier to find.

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, supported **HB 48.**

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN asked on page 5, line 19-25 where did this section go? **Luke Foust** said it went to page 3, line 27-29 to make it more clear.

Closing by Sponsor:

REP. MCGEE said there is a lot more cleaning up to do with these statutes.

{Tape : 1; Side : B; Approx. Time Counter : 9:58 a.m.}

EXECUTIVE ACTION ON HB 48

Motion/Vote: **SEN. MCNUTT** moved **HB 48 BE CONCURRED IN. Motion carried unanimously 8-0.**

EXECUTIVE ACTION ON HB 214

Motion/Vote: **SEN. JABS** moved **HB 214 BE CONCURRED IN. Motion carried unanimously 8-0.**

EXECUTIVE ACTION ON HB 233

Discussion:

SEN. DOHERTY said he doesn't like this bill and the notion of assigning a judicial action to a private collections agency. He said he understands the problems with overworked police officers, but he doesn't understand why this has to be assigned to a private entity when it is a judicial function.

CHAIRMAN GROSFIELD said almost every other state does this.

SEN. JABS said Billings was doing this for awhile and were very successful until they found out they were not in compliance with the law.

SEN. BARTLETT asked if these were civil or criminal fines. **CHAIRMAN GROSFIELD** said they concern both.

SEN. HALLIGAN said if people have a six month time frame to pay and the court doesn't receive any payment in three months the court clerks will send a letter and try to get people to pay. He said in 30 percent of the cases there are people that just can't pay, so they do community service, etc. This bill will be used when people don't come in to pay the fines, etc. to try to collect. There is no additional fees here and other states do use this.

Motion: **SEN. JABS** moved **HB 233 BE CONCURRED IN.**

Discussion:

SEN. DOHERTY said he is concerned about delegating a judicial function to a private corporation.

SEN. GRIMES asked if this is an addition to the fines. **CHAIRMAN GROSFIELD** said line 19-20 clarifies that and there is no additional charge.

Coll. No._____ Box/Fd No._____
Department of Corrections
Public Safety & Trust
EXHIBIT NO. 3
DATE 3/3/99
BILL NO. HB 48

Population Impact of Proposed Legislation

The following information should not be interpreted as comment on the merit of the bill.

HB48	Dan McGee	Conditions on Violation

Summary of bill language which may have impact:

NO IMPACT

Similar inmates currently in system: _____

Population Increase or Decrease Anticipated: _____

Possible # of offender or length of stay increase / decrease: _____

Summary comment:

REVIEWED BY _____ DATE 2/24/99

AN ACT GENERALLY REVISING AND CLARIFYING CERTAIN SENTENCING-RELATED CRIMINAL PROCEDURES STATUTES; AND AMENDING SECTIONS 45-9-205, 46-18-201, 46-18-202, 46-18-203, 46-18-219, 46-18-220, 46-18-222, 46-18-225, 46-18-231, 46-18-303, 46-18-502, AND 46-23-1011, MCA.

WHEREAS, the Correctional Standards and Oversight Committee was authorized by the Fifty-Fifth Legislature to conduct a study of correctional standards and to act as a correctional oversight committee; and

WHEREAS, the Committee contracted for a review of Title 46, chapter 18, MCA, sentencing statutes; and

WHEREAS, the Committee found that the statutes providing for sentencing and judgment regarding criminal procedures are confusing and rife with cross-references, internal references, and inconsistent terminology that make the statutes difficult to read and understand; and

WHEREAS, the Committee recommended that a bill be drafted to amend Title 46, chapter 18, MCA, to make nonsubstantive changes to clarify and streamline the statutes to eliminate contradictions, confusion, inconsistent terminology, and excessive internal references.

THEREFORE, the Legislature of the State of Montana finds it appropriate to so amend certain sentencing-related statutes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-9-205, MCA, is amended to read:

"**45-9-205. *Exemption from mandatory minimum sentences.*** If a ~~court~~ sentencing judge imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in ~~46-18-201(5)~~ [section 3(2)] do not apply."

Section 2. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, ~~the court~~ a sentencing judge may~~:~~

~~(a)~~ defer imposition of sentence, except as otherwise specifically provided ~~in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304~~ by statute, for a period~~, except as otherwise provided,~~:

(i) not exceeding 1 year for ~~any~~ a misdemeanor or for a period not exceeding 3 years for ~~any~~ a felony~~.~~; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended. ~~The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:~~

~~(i) jail base release;~~

~~(ii) jail time not exceeding 180 days;~~

~~(iii) conditions for probation;~~

~~(iv) payment of the costs of confinement;~~

~~(v) payment of a fine as provided in 46-18-231;~~

~~(vi) payment of costs as provided in 46-18-232 and 46-18-233;~~

~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;~~

~~(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;~~

~~(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;~~

~~(x) community service;~~

~~(xi) home arrest as provided in Title 46, chapter 18, part 10;~~

~~(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;~~

~~(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or~~

~~(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).~~

~~(b)~~(2) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. ~~The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).~~

~~(c)~~(3) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

~~(d)~~(b) ~~require~~ payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

~~(e)~~(c) ~~impose~~ a term of incarceration at a county jail or state prison ~~sentence~~, as provided in Title 45, for the offense ~~or~~;

(d) ~~commit~~ commitment of the ~~defendant~~ offender to the department of corrections for a period not to exceed 5 years, with a recommendation for placement in an appropriate correctional facility or program;

~~(f)~~(e) with the approval of the facility or program, ~~order the offender to be placed~~ placement of the offender in a community corrections facility or program as provided in 53-30-321;

~~(g)~~(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, ~~order the offender to be placed~~ placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of

state supervision of the person; or

(h) ~~impose~~ any combination of subsections ~~(1)(b)~~ (2) through ~~(1)(g)~~ (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) jail time not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(n) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(m).

~~(2)~~(5) In addition to any penalties imposed pursuant to subsection (1), if the ~~court~~ sentencing judge finds that the victim of the offense has sustained a pecuniary loss, the ~~court~~ sentencing judge shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

~~(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for~~

~~a felony, regardless of whether any other conditions are imposed.~~

~~(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.~~

~~(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).~~

~~(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.~~

~~(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.~~

~~(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.~~

~~(9)~~(6) In imposing a sentence on ~~a defendant~~ an offender convicted of a sexual or violent offense, as defined in 46-23-502, the ~~court~~ sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

~~(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.~~

~~(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to~~

~~imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.~~

~~(12)~~(7) If a felony sentence includes probation, the department of corrections shall supervise the ~~defendant~~ offender unless the court specifies otherwise.

~~(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219.~~"

Section 3. Mandatory minimum sentences -- restrictions on deferral or suspension. (1) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202(3)(a), aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-9-101(2), (3), and (5)(d), criminal sale of dangerous drugs;

(i) 45-9-102(4), criminal possession of dangerous drugs; and

(j) 45-9-103(2), criminal possession with intent to sell dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

Section 4. Section 46-18-202, MCA, is amended to read:

"**46-18-202. Additional restrictions on sentence.** (1) The ~~court~~ sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that ~~it~~ the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the ~~defendant's~~ offender's holding public office;

(b) prohibition of the ~~defendant's~~ offender's owning or carrying a dangerous weapon;

(c) restrictions on the ~~defendant's~~ offender's freedom of association;

(d) restrictions on the ~~defendant's~~ offender's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the ~~district court~~ sentencing judge imposes a sentence of imprisonment in ~~the~~ a state prison for a term exceeding 1 year, the ~~court~~ sentencing judge may also impose the restriction that the ~~defendant~~ offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the ~~court~~ sentencing judge shall state the reasons for it in writing. If the ~~court~~ sentencing judge finds that the restriction is necessary for the protection of society, ~~it~~ the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) When the court imposes a sentence of probation, as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.~~

(3) An offender convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

~~(4) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two~~

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~~consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.~~"

Section 5. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the ~~defendant~~ offender has violated any condition of a sentence or any condition of a deferred imposition of sentence, the ~~court~~ judge may issue an order for a hearing on revocation. The order must require the ~~defendant~~ offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the ~~defendant~~ offender personally. The ~~court~~ judge may also issue an arrest warrant directing any peace officer or a probation officer to arrest the ~~defendant~~ offender and bring the ~~defendant~~ offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the ~~defendant~~ offender must be brought before the ~~court~~ judge, and the ~~defendant~~ offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the ~~defendant's~~ offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the ~~defendant~~ offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the ~~defendant,~~ offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the ~~defendant~~ offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the ~~defendant~~ offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the ~~defendant's~~ offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the ~~court~~ judge finds that the ~~defendant~~ offender has violated the terms and conditions of the suspended or deferred sentence, the ~~court~~ judge may:

~~(a)~~(i) continue the suspended or deferred sentence without a change in conditions;

~~(b)~~(ii) continue the suspended sentence with modified or additional terms and conditions;

~~(c)~~(iii) revoke the suspension of sentence and require the ~~defendant~~ offender to serve either the sentence imposed or any lesser sentence; or

~~(d)~~(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit, however, must be allowed for jail or home arrest time already served.

(8) If the ~~court~~ judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the ~~defendant~~ offender, if in custody, immediately released."

Section 6. Section 46-18-219, MCA, is amended to read:

"**46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection

(3), if ~~a person~~ an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the ~~person~~ offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if ~~a person~~ an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the ~~person~~ offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202(1), aggravated assault;

(iii) 45-5-302, kidnapping; or

(iv) 45-5-401, robbery.

(2) Except as provided in 46-23-210 and subsection (3) of this section, ~~a person~~ an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical ~~reasons~~ reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the ~~person~~ offender was previously sentenced for either of two or three offenses listed in

subsection (1), ~~as applicable,~~ pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the ~~person's~~ offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or [section 3], this section prevails.

~~(4)~~(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 7. *Section* 46-18-220, MCA, *is amended to read:*

"46-18-220. Sentences for certain offenses committed in state prison -- death penalty. ~~A person serving a sentence of imprisonment in the state prison~~ An offender convicted of having committed ~~the offense of~~ attempted deliberate homicide, aggravated assault, or aggravated kidnapping ~~committed~~ while incarcerated at ~~the~~ a state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

Section 8. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. ~~All mandatory~~ Mandatory minimum sentences prescribed by the laws of this state, ~~and~~ mandatory life sentences prescribed by 46-18-219, and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201~~(5) through (7)~~(1)(b), 46-18-221(3), 46-18-224, ~~and~~ 46-18-502(3), and [section 3] do not apply if:

(1) the ~~defendant~~ offender was less than 18 years of age at the time of the commission of the offense for which the ~~defendant~~ offender is to be sentenced;

(2) the ~~defendant's~~ offender's mental capacity, at the time of the commission of the offense for which the ~~defendant~~ offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged

condition may not be considered an impairment for the purposes of this subsection.

(3) the ~~defendant~~ offender, at the time of the commission of the offense for which the ~~defendant~~ offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the ~~defendant~~ offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the ~~defendant's~~ offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the ~~court~~ judge determines that treatment of the ~~defendant~~ offender in a local community affords a better opportunity for rehabilitation of the ~~defendant~~ offender and for the ultimate protection of the victim and society, in which case the ~~court~~ judge shall include in its judgment a statement of the reasons for its determination."

Section 9. Section 46-18-225, MCA, is amended to read:

"**46-18-225. ~~Criteria for sentencing~~ Sentencing of nonviolent felony offenders -- criteria -- alternatives to be considered -- court to state reasons for imprisonment.** (1) In sentencing a nonviolent felony offender, the sentencing judge shall first consider alternatives to imprisonment of the offender in a state prison, including placement of the offender in a community corrections facility or program, a prerelease center, or a prerelease program. In considering alternatives to imprisonment, the sentencing judge shall examine the sentencing criteria contained in subsection (2).

(2) Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of imprisonment in a state prison, the ~~court~~ sentencing judge shall take into account whether:

~~(1)~~(a) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in a state prison;

~~(2)~~(b) the needs of the offender can be better served in the community or in a facility or program other than a state prison;

~~(3)~~(c) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

~~(4)~~(d) the offender acted under strong provocation;

~~(5)~~(e) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

~~(6)~~(f) the offender has no prior history of conviction for a criminal act or, if the offender has a prior history of conviction for a criminal act, the offender has led a law-abiding life for a substantial period of time before the commission of the present crime;

~~(7)~~(g) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

~~(8)~~(h) the character and attitude of the offender indicate that the offender is likely to commit another crime;

~~(9)~~(i) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

~~(10)~~(j) imprisonment of the offender would create an excessive hardship on the offender or the offender's family.

(3) If the judge sentences the offender to a state prison, the judge shall state the reasons why the judge did not select an alternative to imprisonment, based on the criteria contained in subsection (2)."

Section 10. Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) (a) ~~Whenever~~ Except as provided in subsection (1)(b), whenever, upon a verdict or a plea of guilty, ~~a person~~ an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the ~~court~~ sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine~~,~~ only in accordance with subsection (3)~~, and in lieu of or in addition to a sentence of imprisonment~~.

(b) For those crimes for which penalties are provided in ~~45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109~~ the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202(3), aggravated assault, felony assault;

(iii) 45-5-302(2), kidnapping;

(iv) 45-5-303(2), aggravated kidnapping;

(v) 45-5-401(2), robbery;

(vi) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(vii) 45-5-503(2) and (3), sexual intercourse without consent;

(viii) 45-9-101(2), (3), and (5)(d), criminal sale of a narcotic drug, criminal sale of a dangerous drug included in Schedule I or Schedule II, or other criminal sale of a dangerous drug;

(ix) 45-9-102(4), criminal possession of an opiate;

(x) 45-9-103(2), criminal possession of an opiate with an intent to sell; and

(xi) 45-9-109, criminal sale of dangerous drugs on or near school property.

(2) Whenever, upon a verdict or a plea of guilty, ~~a person~~ an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the ~~court~~ sentencing judge may impose a fine only in accordance with subsection (3).

(3) The ~~court~~ sentencing judge may not sentence ~~a defendant~~ an offender to pay a fine unless the ~~defendant~~ offender is or will be able to pay the fine. In determining the amount and method of payment, the ~~court~~ sentencing judge shall take into account the nature of the crime committed, the financial resources of the ~~defendant~~ offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the ~~court~~ sentencing judge not to exceed $50,000."

Section 11. Section 46-18-303, MCA, is amended to read:

"**46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

(1) (a) The offense was deliberate homicide and was committed:

(i) by ~~a person~~ an offender serving a sentence of imprisonment in ~~the~~ a state prison;

~~(2)~~(ii) ~~The offense was deliberate homicide and was committed~~ by ~~a defendant~~ an offender who had been previously convicted of another deliberate homicide;

~~(3)~~(iii) ~~The offense was deliberate homicide and was committed~~ by means of torture;

~~(4)~~(iv) ~~The offense was deliberate homicide and was committed~~ by ~~a person~~ an offender lying in

wait or ambush~~.~~;

~~(5)~~(v) ~~The offense was deliberate homicide and was committed~~ as a part of a scheme or operation that, if completed, would result in the death of more than one person~~.~~; or

(vi) by an offender during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

~~(6)~~(b) The offense was deliberate homicide, as defined in 45-5-102(1)(a), and the victim was a peace officer killed while performing the officer's duty.

~~(7)~~(2) The offense was aggravated kidnapping that resulted in the death of the victim or the death by direct action of the ~~defendant~~ offender of a person who rescued or attempted to rescue the victim.

~~(8)~~(3) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by ~~a person~~ an offender who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter, and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

~~(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.~~

~~(10)~~(4) The offense was sexual intercourse without consent ~~and~~, the ~~defendant~~ offender has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another state or of the United States that if committed in this state would be the offense of sexual intercourse without consent, and the ~~defendant~~ offender inflicted serious bodily injury upon a person in the course of committing each offense."

Section 12. Section 46-18-502, MCA, is amended to read:

"46-18-502. *Sentencing of persistent felony offender.* (1) Except as provided in 46-18-219 and subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000,

or both, if the offender was 21 years of age or older at the time of the commission of the present offense.

(2) ~~If~~ Except as provided in 46-18-219, an offender shall be imprisoned in a state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if:

(a) the offender was a persistent felony offender, as defined in 46-18-501, at the time of the offender's previous felony conviction~~,~~;

(b) less than 5 years have elapsed between the commission of the present offense and ~~either~~:

(i) the previous felony conviction; or

(ii) the offender's release on parole, ~~or otherwise~~ from prison, or from other commitment imposed as a result of the previous felony conviction~~,~~; and

(c) the offender was 21 years of age or older at the time of the commission of the present offense~~, the offender shall, except as provided in 46-18-219, be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both~~.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) of this section or the first 10 years of a sentence imposed under subsection (2) of this section may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed."

Section 13. Section 46-23-1011, MCA, is amended to read:

"**46-23-1011. Supervision on probation.** (1) The department shall supervise ~~persons~~ offenders during their probation period in accord with the conditions set by a ~~court~~ sentencing judge.

(2) A copy of the conditions of probation must be signed by the probationer and given to the probationer and the probationer's probation and parole officer, who shall report on the probationer's progress under rules of the ~~court~~ sentencing judge. Any probation agreement signed by the probationer may contain a clause waiving extradition.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the

probationer of the restoration of rights on successful completion of the sentence.

(4) The probation and parole officer may recommend and a ~~court~~ judge may modify any condition of probation or suspension of sentence at any time. Notice must be given to the probation and parole officer before any condition is modified, and the officer must be given an opportunity to present the officer's ideas or recommendations on any modification. A copy of a modification of conditions must be delivered to the probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only as provided under the provisions of 46-18-246.

(5) The probation and parole officer shall keep records as the department or the ~~court~~ sentencing judge may require.

(6) (a) Upon recommendation of the probation and parole officer, a ~~court~~ judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if the ~~court~~ judge determines that a conditional discharge from supervision is in the best interests of the probationer and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Subsection (6)(a) does not prohibit a ~~court~~ judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the ~~court~~ sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the ~~court~~ judge may not place an offender on probation under supervision by that district office unless ~~it~~ the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the ~~court~~ judge for conditional discharge. The ~~court~~ judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 14. Codification instruction. The code commissioner shall codify all material enacted by the 56th legislature that amends material affected by [this act] to reflect the provisions of [this act] and shall make corresponding changes in style and arrangement to accommodate the codification.

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